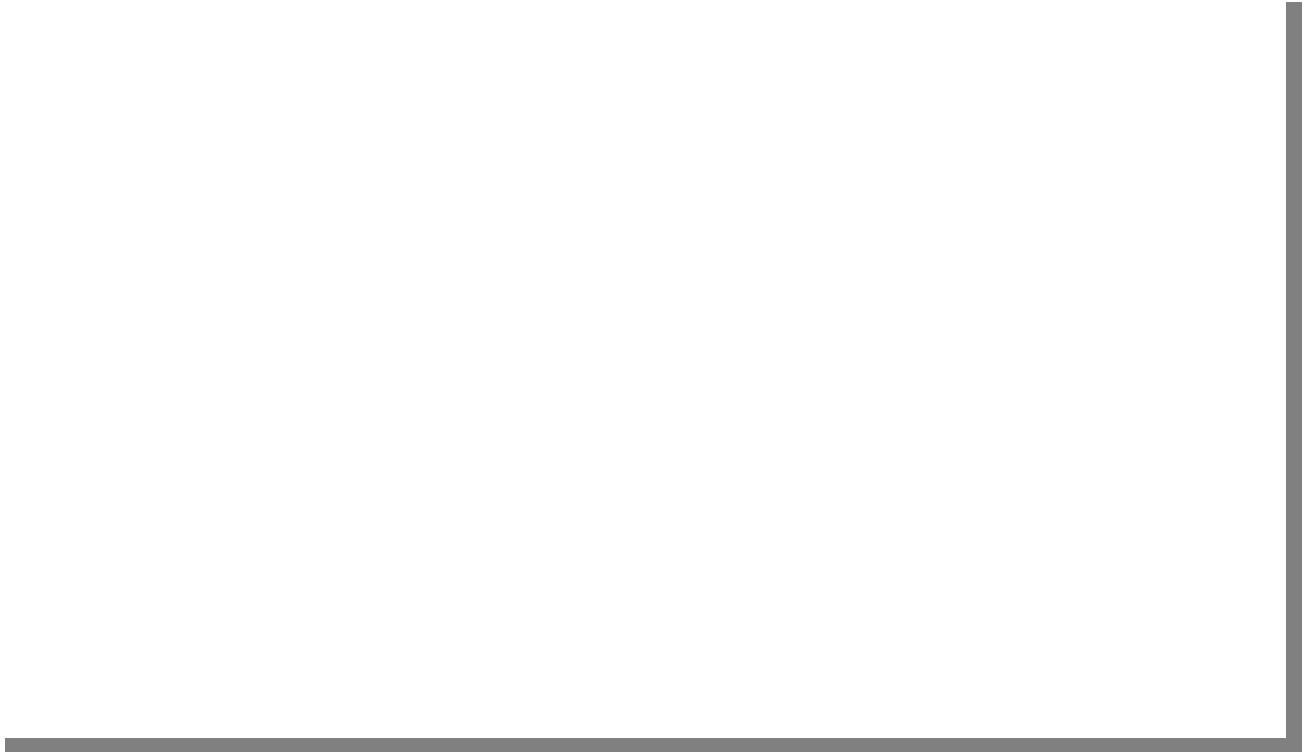


Montana's

Workers' Compensation System . . .



Declaration of Public Policy¹

It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole, they are intended to assist the injured worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

A worker's removal from the work force due to a work-related injury or disease has a negative impact on the injured worker, the injured worker's family, the employer, and the general public. It is therefore, an objective of the workers' compensation system to return an injured worker to work as soon as possible after the worker has suffered a work-related injury or disease.

Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to obtain benefits speedily, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

Title 39, chapters 71 and 72 (Workers' Compensation Act and the Occupational Disease Act), must be construed according to their terms and not liberally in favor of any party.

It is the intent of the legislature that stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to verify objectively and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, as is the case with repetitive injury claims, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.

¹ MCA 39-71-105

Insurance - Who's Covered, Who's Not

If you are an employer or an employee, the Workers' Compensation Act applies to you. An employer who has an employee in service under any appointment or contract of hire, expressed or implied, oral or written, must elect to be bound by the provisions of compensation Plan 1 (self-insured), Plan 2 (privately insured), or Plan 3 (State Fund).

Employment Exempted²

The Workers' Compensation Act and the Occupational Disease Act do not apply to any of the following employments:

- ◆ Household and domestic employment
- ◆ Casual employment
- ◆ Dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code
- ◆ Sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company
- ◆ Broker or salesperson performing under a license issued by the Board of Realty
- ◆ A direct seller
- ◆ Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States
- ◆ A person performing services in return for aid or sustenance only
- ◆ Volunteers
- ◆ Employment with a railroad engaged in interstate commerce
- ◆ An official, including a timer, referee, or judge, at a school amateur athletic event
- ◆ A person performing services as a newspaper carrier or freelance correspondent
- ◆ Cosmetologist's services and barber's services
- ◆ A person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the reservation
- ◆ A jockey who is performing under a license issued by the Board of Horse Racing
- ◆ An employer's spouse
- ◆ A petroleum land professional
- ◆ An officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company
- ◆ A person who is an officer or a manager of a ditch company
- ◆ Service performed by an ordained, commissioned, or licensed minister of a church
- ◆ Independent Contractors

² MCA 39-71-401

How is Montana's Workers' Compensation System Administered?

The Employment Relations Division provides a wide variety of services and regulation related to workers' compensation and safety.

Workers' Compensation Regulation Bureau

The **Contractor Registration Unit** ensures the business has complied with workers' compensation requirements. The law provides protection from liability for workers' compensation claims for contractors who use the service of other registered construction contractors.

The **Uninsured Employers Fund Unit** ensures employers and employees are protected under the Workers' Compensation and Occupational Disease Acts. The Unit enforces coverage requirements for all employers, pays benefits to injured workers whose employers did not have workers' compensation coverage, and manages the fund from which benefits are paid.

The **Subsequent Injury Fund Unit** administers the funds that are used to offset claim costs associated with injuries to workers with disabilities. This reduces claim liability and provides an incentive for employers to hire certified workers.

The **Medical Regulations Unit** administers a program that provides an effective and equitable method of health care cost containment. Medical fee schedules are established by the unit and utilized by insurers to reimburse medical providers.

The **Carrier Compliance Unit** monitors compliance of private workers compensation carriers. The unit also licenses professional employer organizations and processes extraterritorial agreements.

The **Independent Contractor Central Unit** issues decisions on employment relationships for the Department of Revenue, Labor Standards, Unemployment Insurance, and Workers' Compensation Compliance. The unit also issues Independent Contractor (IC) Exemptions.

Claims Assistance Bureau

The **Claims Unit** ensures compliance with the workers' compensation and occupational disease laws relating to benefits and claims. The unit also regulates attorney fees, administers the occupational disease panel process, and provides assistance to insurers, attorneys and injured workers.

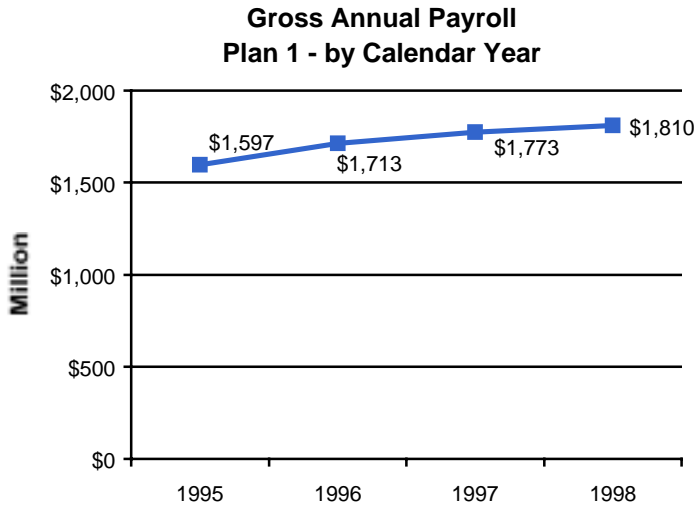
The **Data Management Unit** enters data on new claims, tracks policy coverage, maintains the workers' compensation database system and provides a comprehensive annual report on workers' compensation to the governor and the legislature.

The **Mediation Unit** provides an alternative method of resolving workers' compensation benefit disputes before the dispute goes to the Workers' Compensation Court. This is a mandatory non-binding process.

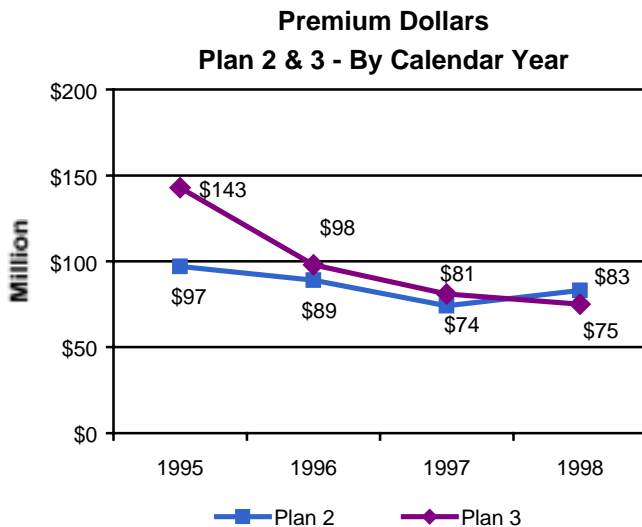
Safety Bureau

The Safety Bureau conducts inspections of public employers, performs on-site consultations for private employers and inspects coal mines and sand and gravel operations throughout the state. The Bureau provides safety and occupational health training for both public and private employers.

Montana Workers' Compensation Market



Plan 1 employers pay no premium.



Montana employers have several options for obtaining workers' compensation coverage for their employees. Employers with sufficient cash reserves may qualify as individual self-insured (Plan 1) by applying to the Employment Relations Division, or employers may choose to join with other employers in their industry to form a self-insured group. Montana currently has 53 individual self-insurers and 8 self-insured groups (4 public and 4 private).

All other employers may opt for coverage with private insurance companies (Plan 2) in the "voluntary market". Montana has 446 private insurance companies licensed to write workers' compensation insurance.

Employers may obtain coverage through the State Compensation Mutual Insurance Fund (State Fund). The State Fund (Plan 3) is the insurer of last resort, and represents approximately 45% of the current workers' compensation market. The change in Montana's market share is reflected in the following table.

**Distribution of Market Share
by Plan & by Calendar Year**

Calendar Year	1995	1996	1997	1998
Plan 1 – Payroll	\$1,597,336,997	\$1,713,291,665	\$1,773,148,488	\$1,810,313,984
Plan 2 – Premium	\$97,572,966	\$89,893,661	\$74,615,961	\$83,274,441
Plan 3 – Premium	\$143,275,000	\$98,270,000	\$81,057,000	\$75,177,196

Montana Workers' Compensation and Occupational Disease Acts - 1999 Bill Summary

HB 57: University System.:

39-71-403: Plan three exclusive for state agencies ... (Effective July 1, 2000). Authorizes the University System to purchase coverage through Plan 1, 2, or 3.

HB 430: Managed Care Organization and Preferred Providers Clarifications:

39-71-1101: Choice of physician by worker -- change of physician -- receipt of care from managed care organization... (Effective October 1, 1999). Provides that if a worker is referred to an MCO, written notice is required after the date of injury and must advise the worker of the right to choose the initial treating physician. General notices posted in the workplace must include notifying the worker of the right to choose the initial treating physician, and does not constitute written notice to the worker.

39-71-1102: Preferred provider organizations -- establishment -- limitations... (Effective October 1, 1999). Provides that workers must be given written notice of referral to preferred providers and the notice must cite the right to choose the initial treating physician. General notices posted in the workplace do not constitute written notice and must include advice of the worker's right to choose the initial treating physician.

HB 592: Dispute Resolution Process Changes:

39-71-304: Books, records, and payrolls to be open to inspection -- penalty for refusal -- subpoenas... (Effective April 23, 1999.) Transfers jurisdiction to the Workers' Compensation Court concerning an employer's refusal to submit pertinent records and disobedience to a subpoena or refusal to testify actions.

39-71-315: Prohibited actions -- penalty... (Effective April 23, 1999.) Penalties collected from medical providers who fail to document services or treatment, or refer workers to a facility owned by the provider without giving the worker a list of alternate facilities, must be paid to the general fund. Gives the Workers' Compensation Court jurisdiction over actions brought to collect the penalty and over disputes concerning the penalty assessment. This section does not apply to medical services provided by a treating physician with an ownership interest in a managed care organization. This section is not subject to mediation.

39-71-316: Filing true claim -- obtaining benefits through deception or other fraudulent means... (Effective April 23, 1999). Transfers jurisdiction over the penalty and collection from the District Courts to the Worker's Compensation Court.

39-71-317: Employer not to terminate worker for filing claim -- preference -- jurisdiction over dispute... (Effective April 23, 1999). Gives district court exclusive jurisdiction over disputes concerning grounds for termination. Gives the Workers' Compensation Court exclusive jurisdiction concerning reemployment preference and is not subject to mediation or contested case hearing.

39-71-401: Employments covered and employments exempted...Applies retroactively to claims for injuries occurring before April 23, 1999 unless a party elects, after notification by the Department of Labor and Industry, to remain in the contested case process. Eliminates the appeal referee and provides for a mandatory mediation process.

39-71-415. Procedure for resolving disputes regarding independent contractor status... **Applies retroactively** to claims for injuries occurring before April 23, 1999 unless a party elects, after notification by the Department of Labor and Industry, to remain in the contested case process. Eliminates the appeal referee and provides for a mandatory mediation process. Clarifies the mediation process when a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether or not a claimant is an independent contractor.

39-71-601. Statute of limitation on presentment of claim -- waiver... **Applies retroactively** to claims for injuries occurring before April 23, 1999 unless a party elects, after notification by the Department of Labor and Industry, to remain in the contested case process. Takes the Department out of the decision to grant the extension. Provides for the insurer to consider the criteria and either grant or deny the extension, and transfers original jurisdiction from the Department Contested Case Hearing process to the Workers' Compensation Court, subsequent to mediation.

39-71-610. Termination of benefits by insurer -- department order to pay disputed benefits prior to hearing or mediation -- limitation on order -- right of reimbursement... **Applies retroactively** to claims for injuries occurring before April 23, 1999 unless a party elects, after notification by the Department of Labor and Industry, to remain in the contested case process. Adds the ability to order payment of disputed benefits prior to a mediation; changes the contested case hearing to a hearing before the Workers' Compensation Court; and transfers the original jurisdiction of disputes over the Department order directly to the Workers' Compensation Court.

39-71-613. Regulation of attorney fees -- forfeiture of fee for noncompliance - Return of fee when claimant received benefits through fraud or deception... **Applies retroactively** to claims for injuries occurring before April 23, 1999 unless a

party elects, after notification by the Department of Labor and Industry, to remain in the contested case process. Transfers the original jurisdiction of disputes concerning the forfeiture from the Department's Contested Case Hearing process directly to the Workers' Compensation Court.

39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates -- fee limitation... Applies retroactively to claims for injuries occurring before April 23, 1999 unless a party elects, after notification by the Department of Labor and Industry, to remain in the contested case process. Eliminates the requirement of the treating physician to request approval of the treatment and eliminates the Department's appointment of a panel of physicians to review the proposed treatment and determine its appropriateness. The change also transfers disputes over the treatment from the Department's Contested Case Hearing process to mediation and the Workers' Compensation Court.

39-71-1032. Termination of benefits for non-cooperation with rehabilitation provider -- appeal... Applies retroactively to claims for injuries occurring before April 23, 1999 unless a party elects, after notification by the Department of Labor and Industry, to remain in the contested case process. Transfers the appeal process from the Department's Contested Case Hearing process to mediation and the Workers' Compensation Court.

39-72-403. Time when claims must be presented... Applies retroactively to occupational diseases occurring before April 23, 1999 unless a party elects, after notification by the Department of Labor and Industry, to remain in the contested case process. Takes the Department out of the decision to grant the extension, provides for the insurer to consider the criteria and either grant or deny the extension, and transfers original jurisdiction from the Department's Contested Case Hearing process to the Workers' Compensation Court, subsequent to mediation.

39-72-601. Medical evaluators... Applies retroactively to occupational diseases occurring before April 23, 1999 unless a party elects, after notification by the Department of Labor and Industry, to remain in the contested case process. The Department will now develop a list of evaluators rather than a "panel", which is eliminated in 39-72-602 (below).

39-72-602. Insurer may accept liability -- procedure for medical examination when insurer has not accepted liability... Applies retroactively to occupational diseases occurring before April 23, 1999 unless a party elects, after notification by the Department of Labor and Industry, to remain in the contested case process. Eliminates the three step procedure and replaces it with one independent examination and a report from the evaluator submitting findings. If a dispute exists regarding the compensability of an occupational disease claim, the jurisdiction is transferred from the Department's Contested Case Hearing process to mediation and then to Workers' Compensation Court.

39-72-607. Periodic medical examinations... Applies retroactively to occupational diseases occurring before April 23, 1999 unless a party elects, after notification by the Department of Labor and Industry, to remain in the contested case process. Eliminates the "panel" and provides for an "evaluator" consistent with the other changes in the occupational disease statutes.

39-72-608. Payment of medical examination, report, and autopsy expenses... Applies retroactively to occupational diseases occurring before April 23, 1999 unless a party elects, after notification by the Department of Labor and Industry, to remain in the contested case process. Changes are consistent with the changes made in 39-72-602.
Repealed: 39-72-609, 39-72-610, 39-72-611, 39-72-612, and 39-72-613, MCA. (Effective April 23, 1999).

SB117: Housekeeping bill:

39-71-123. Wages defined... (Effective April 20, 1999). Excludes aggregation of wages from non-covered employment in computing benefits.

39-71-201. Administration fund... (Effective July 1, 1999). Applies retroactively within the meaning of 1-2-109, to occurrences after June 30, 1991. The current assessment methodology terminates June 30, 1999. Assessments are now 3% of the following benefits paid during the preceding calendar year: total compensation benefits; and medical benefits. Medical benefits include hospital treatment and prescription drugs, except for medical benefits in excess of \$200,000 per occurrence. Paid losses must be reported annually by March 31 on a Department form.

39-71-225. Workers' compensation database system... (Effective July 1, 1999). Beginning July 1, 2000, electronic reporting is required of first reports of injury and subsequent reports for those insurers/adjusters who submitted more than 50 such reports in the preceding calendar year.

39-71-432. Definitions... (Effective July 1, 1999). Groups formed for the purpose of purchasing individual workers' compensation insurance policies no longer need Department approval. (This was repealed last session in SB 349, but language here was inadvertently left in the statute).

39-71-605. Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost... (Effective July 1, 1999). Clarifies that a panel includes a practitioner who has substantial experience in the field of medicine concerned with the matters presented, and whose licensure qualifies the practitioner to act as a treating physician.

39-71-610. Termination of benefits by insurer -- department order to pay disputed benefits prior to hearing or mediation -- limitation on order -- right of reimbursement... (Effective July 1, 1999). Mediation or a hearing is a prerequisite for the Department to order additional benefits.

39-71-725. Payment of burial expense... (Effective July 1, 1999). Increases burial allowance from \$1,400 to \$4,000.

39-71-905. Certification as person with a disability... (Effective July 1, 1999). Currently, if an individual does not become certified under the subsequent injury fund within 60 days of becoming employed, the employer is not eligible for the benefits of the fund. This section amended to allow a person to apply for certification with the fund at any time, whether employed or not.

39-71-1004. Industrial accident rehabilitation account... (Effective July 1, 1999). Changes the calculation for rehabilitation assessments from a fiscal year to a calendar year, which aligns the benefit periods with those used for the administrative and subsequent injury fund assessments.

39-72-405. General limitations on payment of compensation... (Effective July 1, 1999). Removes irrelevant date and eliminates the necessity for a medical panel to make a decision whether the employee may continue in employment.

39-72-608. Payment of medical examination, report, and autopsy expenses... (Effective July 1, 1999). Clarifies who is responsible for payment of the two physician reviews when an occupational disease is claimed to have caused death: the party requesting the examination.

39-72-714. Reduction or suspension of compensation for unsanitary or injurious practices or refusal to submit to medical or surgical treatment... (Effective July 1, 1999). Allows an insurer, rather than the Department, to determine when a claimant's benefits should be terminated due to unsanitary or injurious practices; provides that disputes which might arise under this statute use mediation, which is the same resolution process as other benefit disputes.

SB 466: Functional Capacities Evaluations:

39-71-605. Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost... (Effective March 30, 1999). Functional capacity evaluations may be conducted by occupational therapists to conduct functional capacity evaluations along with physical therapists.

Miscellaneous Changes

SJR 15:

A Joint Resolution that the Legislative Council use an interim committee to study the current level of benefits paid to injured workers, and the frequency of indemnity claims under the Workers' Compensation Act. Findings and recommendations will be made to the 57th Legislature.

HB 66: Turnaround time on license or permit applications:

Title 2, chapter 15. Notice of estimated turnaround time on application for permit or license... (Effective October 1, 1999). Requires state agencies to include an estimated time it will take for the agency to process and act on applications.

HB 495: Silicosis Benefit Change:

Title 39, Chapter 73, Silicosis Act. Appropriations. General Fund Appropriation... (Effective July 1, 1999). Appropriates general funds to the Department of Labor and Industry to fund an increase of \$25 per month for each individual who receives silicosis benefits.

SB 396: Premium Rates:

39-71-2211. Premium rates for construction industry -- filing required... (Effective July 1, 1999, and applies to premium rates computed for the construction industry beginning July 1, 2000). Changes starting point for premium computations from one and one-half times to 1.168 times the Montana average weekly wage.

Significant Court Cases From 1999

Supreme Court decisions on two cases in 1999 may have a significant impact on the Workers' Compensation System.

The first case, Jerry Henry v. State Compensation Insurance Fund, addressed the entitlement to rehabilitation benefits for Occupational Disease claimants. The Workers' Compensation Act specifically provides rehabilitation benefits to injured workers. The Occupational Disease Act (ODA) is silent on that issue. In the Henry case, the Supreme Court found the Montana Legislature's failure to provide vocational rehabilitation benefits to workers under the Occupational Disease Act violates the equal protection clause of the Montana Constitution.

The second significant decision is actually two combined cases: Doug Lockhart v. New Hampshire Insurance Company and Liberty Northwest Insurance Corporation v. Nancy Petak and Community Medical Center. The Supreme Court found that the attorney's fee lien codified at §37-61-420, MCA, applies to medical benefits recovered due to the efforts of the attorney in a workers' compensation claim.

